

21 C.J.S. Courts § 341

Corpus Juris Secundum | May 2023 Update

Courts

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X. Clerks of Courts

D. Liabilities and Criminal Responsibility

§ 341. Liabilities of clerks, generally; immunity

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#) 72 to 75

A clerk of court who negligently performs or fails to perform a ministerial duty may be held liable for damages.

There is authority holding that a clerk of court who negligently performs or fails to perform a ministerial¹ or administrative² duty and thereby proximately causes injury to another may be held liable for damages.³ By contrast, where the clerk performs a duty that requires the exercise of judgment and discretion in its performance, it is considered a judicial act⁴ entitling the clerk to judicial⁵ or quasi-judicial⁶ immunity from liability.

Other authority holds that the question of whether the act of a court clerk is immune from suit does not rest on whether the clerk's act is discretionary or nondiscretionary; rather, judicial immunity applies to all acts of auxiliary court personnel that are basic and integral parts of the judicial function unless those acts are done in the clear absence of all jurisdiction.⁷ It has also been held that clerks of court have absolute immunity from actions for damages arising from acts that they are specifically required to do under court orders or at the judge's direction⁸ but only qualified immunity for those routine duties not explicitly commanded by court decree or by the judge's instructions.⁹

Clerks of court cannot be held civilly liable for distributing unsealed pleadings so long as they act in accordance with the law.¹⁰

Defaults of deputy.

Defaults committed by a deputy clerk while acting within the scope of his or her duties and in the name of the principal clerk are, in legal contemplation, the defaults of the principal clerk, and the latter is liable accordingly to third persons injured thereby.¹¹

Action on bond.

A cause of action for damages is permitted against the bond posted by a clerk pursuant to a statute requiring the clerk to post bond for the discharge of claims incurred against the clerk in an official capacity; in such a case, the court clerk may not be held personally liable beyond the amount of the statutory bond.¹²

A bonding agency is not liable on its bond when the clerk commits a criminal act.¹³

CUMULATIVE SUPPLEMENT

Cases:

Municipal court clerk was entitled to quasi-judicial immunity in § 1983 action based on her issuing allegedly invalid arrest warrant that included unconstitutional cash bond requirement, even if judge did not direct clerk to issue warrant, where judge authorized clerk to use her discretion to issue and set warrants with bond conditions. [U.S. Const. Amends. 4, 8; 42 U.S.C.A. § 1983. Hamilton v. City of Hayti, Missouri, 948 F.3d 921 \(8th Cir. 2020\).](#)

State prosecutor and deputy state court clerk were entitled to immunity under state employee sovereign immunity statute against state law claims brought against them in their individual capacities by car owner, arising from forfeiture proceedings filed against car after owner let friend drive car and police seized car when friend was arrested on drug charges; owner's claims were based entirely on prosecutor's and clerk's performance of their official duties, and owner did not allege facts to plausibly show that prosecutor or clerk acted wantonly, recklessly, or maliciously. [Conn. Gen. Stat. Ann. § 4-165\(a\). Campbell v. City of Waterbury, 585 F. Supp. 3d 194 \(D. Conn. 2022\).](#)

Challenged acts were not related to general functions normally performed by judicial officer, as factor against Tennessee state court clerk having judicial immunity in action, by nonprofit entity that used revolving fund to post cash bail for Tennessee defendants, challenging local court rule under which clerk garnished cash bond deposits to collect judgment debts from court costs, fines, and restitution, as well as policies created by clerk's office which required people posting cash bonds to acknowledge notice of and agree in writing to future garnishment; clerk promulgated and required collection on certain paperwork and acted as, effectively, bursar, accepting and refunding payments out of fund over which he was entrusted authority and for which he performed some basic accountancy. [Nashville Community Bail Fund v. Gentry, 496 F. Supp. 3d 1112 \(M.D. Tenn. 2020\).](#)

Common-law tort immunity did not apply to litigant's mandamus action challenging circuit court clerk's levy of fees under court fees statute to file a petition to vacate a nonfinal dismissal of litigant's underlying civil case for want of prosecution; litigant's action did not sound in tort, and the clerk's imposition of fees was ministerial rather than discretionary. [705 Ill. Comp. Stat. Ann. 105/27.2a\(g\)\(2\). Gassman v. Clerk of the Circuit Court of Cook County, 2017 IL App \(1st\) 151738, 410 Ill. Dec. 787, 71 N.E.3d 783 \(App. Ct. 1st Dist. 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

1 U.S.—[Samuel v. Michaud](#), 980 F. Supp. 1381 (D. Idaho 1996), aff'd, 129 F.3d 127 (9th Cir. 1997); [Harbeck v. Smith](#), 814 F. Supp. 2d 608 (E.D. Va. 2011).

2 U.S.—[Samuel v. Michaud](#), 980 F. Supp. 1381 (D. Idaho 1996), aff'd, 129 F.3d 127 (9th Cir. 1997).

Ala.—[Ex parte City of Tuskegee](#), 932 So. 2d 895 (Ala. 2005).

3 Kan.—[Cook v. City of Topeka](#), 232 Kan. 334, 654 P.2d 953, 34 A.L.R.4th 1172 (1982).

Or.—[Praggastis v. Clackamas County](#), 305 Or. 419, 752 P.2d 302 (1988).

4 Ala.—[Ex parte City of Tuskegee](#), 932 So. 2d 895 (Ala. 2005).

Entry of default judgment

U.S.—[Lundahl v. Zimmer](#), 296 F.3d 936 (10th Cir. 2002).

5 Ala.—[Ex parte City of Tuskegee](#), 932 So. 2d 895 (Ala. 2005).

Neb.—[Talbot v. Douglas County](#), 249 Neb. 620, 544 N.W.2d 839 (1996).

A.L.R. Library

Applicability of judicial immunity to acts of clerk of court under state law, 34 A.L.R.4th 1186.

6 U.S.—[Samuel v. Michaud](#), 980 F. Supp. 1381 (D. Idaho 1996), aff'd, 129 F.3d 127 (9th Cir. 1997).

Fla.—[Fong v. Forman](#), 105 So. 3d 650 (Fla. 4th DCA 2013).

7 N.Y.—[Weiner v. State](#), 273 A.D.2d 95, 710 N.Y.S.2d 325 (1st Dep't 2000).

8 U.S.—[Clay v. Allen](#), 242 F.3d 679 (5th Cir. 2001).

Fla.—[Fong v. Forman](#), 105 So. 3d 650 (Fla. 4th DCA 2013); [Fuller v. Truncale](#), 50 So. 3d 25 (Fla. 1st DCA 2010).

Mass.—[Temple v. Marlborough Div. of Dist. Court Dept.](#), 395 Mass. 117, 479 N.E.2d 137 (1985).

Or.—[Praggastis v. Clackamas County](#), 305 Or. 419, 752 P.2d 302 (1988).

9 U.S.—[Clay v. Allen](#), 242 F.3d 679 (5th Cir. 2001).

10 Pa.—[Bochetto v. Gibson](#), 580 Pa. 245, 860 A.2d 67 (2004).

11 Pa.—[Petticord v. Joyce](#), 516 Pa. 35, 531 A.2d 1383 (1987).

Va.—[First Virginia Bank-Colonial v. Baker](#), 225 Va. 72, 301 S.E.2d 8 (1983).

As to liability of deputy clerks and assistants, see § 348.

12 La.—[Bell v. Crump](#), 651 So. 2d 975 (La. Ct. App. 3d Cir. 1995), writ denied, 654 So. 2d 1106 (La. 1995).

13 § 343.